IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

RSA.No. 770 of 2006()

AS.128/1998 of DISTRICT COURT, PATHANAMTHITTA
OS.62/1996 of MUNSIFF COURT, RANNI

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APPELLANTS/ APPELLANTS/DEFENDANTS

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1. THAMPI, S/O.GANGADHARAN,
   JAYA SADANAM, KUMARAMPEROOR VADAKKEKARA MURI,
   CHITTAR-SEETHATHODU VILLAGE, RANNY TALUK.

2. JAYASREE, W/O.THAMPI,
   JAYA SADANAM, KUMARAMPEROOR VADAKKEKARA MURI,
   CHITTAR-SEETHATHODU VILLAGE, RANNY TALUK.

BY ADV. SRI.SIBY MATHEW
SRI.A.A.MOHAMMED NAZIR

RESPONDENTS/RESPONDENT/ PLAINTIFFS

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1. RAVI, S/O.GANGADHARAN,
   ERATTAKINATTIL HOUSE, CHITTAR,
   SEETHATHODU VILLAGE,
   RANNY TALUK.

2. PRASANNAKUMARI, W/O.RAVI,
   ERATTAKINATTIL HOUSE, CHITTAR,
   SEETHATHODU VILLAGE,
   RANNY TALUK.

BY ADV. SRI.JACOB P.ALEX

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.1972/06 IN RSA 770/06

DISMISSED

12/3/2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

PA to Judge.

M.SASIDHARAN NAMBIAR,J.

R.S.A .NO.770 OF 2006

Dated 12th March 2007

J U D G M E N T

Defendants in O.S.62/96 on the file of Munsiff court, Ranny are appellants. Plaintiffs therein are respondents. Item No.1 of plaint schedule property is 42 cents in survey No.968/1/36/13 of Chittar Seethathode Village and item No.2 is a thatched temporary shed in item No.1 of plaint Schedule property. Admittedly plaint schedule property belong to Narayanan. Case of respondents is that under Ext.A1 sale deed dated 12/6/1995 Narayanan assigned the property in favour of respondents and appellants have no right over the property and taking advantage of absence of respondents in 1991 appellants put up plaint item No.2 thatched shed therein and started residing and they have no right to continue residence therein and respondents are entitled to recovery of possession of item No.2 plaint schedule property and are also entitled to a decree for permanent prohibitory

injunction in respect of item No.1 of plaint schedule property. Case of appellants was that while Narayanan was in possession of property, 15 cents of the property was agreed to be sold for a total consideration of Rs.7,000/- and Ext.B1 agreement for sale was executed on 31/12/1989 after receiving Rs.5,000/- by Narayanan and balance of Rs.2,000/- is to be paid and property was put in possession of appellants and since then they have been in possession of the property and respondents are not entitled to recover possession of the same. It was contended that under Section 53 A of Transfer of Property Act they are entitled to protect possession of the plaint schedule property put in their possession as part of performance of the agreement for sale and they were ready and willing to perform their part of agreement respondents are not entitled to the decree sought for.

2. Learned Munsiff framed necessary issues. Five witnesses were examined on the side of plaintiffs and Exts.A1 and A2 were also marked. Four witnesses were examined on the side of defendants. Ext.B1 was also marked. Learned Munsiff on the evidence found that

execution of Ext.B1 agreement was not proved and therefore appellants are not entitled to claim protection under Section 53 A of Transfer of Properties Act. It was also found that under Ext.A1 respondents have title to the plaint schedule property and they are entitled to declaration of their title over plaint schedule property and recovery of possession of item No.2 of plaint B schedule property and also the permanent prohibitory injunction. Suit was decreed. Appellants challenged the decree and judgment before District court in A.S.128/1998. Learned District Judge elaborately considered evidence and on re-appreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in this second appeal.

3. Learned counsel appearing for appellants was heard. Argument of learned counsel appearing for appellants was that Ext.B1 agreement was proved by evidence of Dws.3 and 4 the attestors to Ext.B1 agreement and by the evidence of DW2, daughter of scribe, who is no more and courts below did not properly appreciate the evidence and should have found that

Ext.B1 agreement was executed by Narayanan and therefore appellants are protected by Section 53 of Transfer of Properties Act and the decree and judgment granted by courts below are unsustainable.

4. On hearing learned counsel appearing for appellants and going through judgments of courts below, I do not find any substantial question of law involved in the appeal. Title of Narayanan is not disputed. Under Ext.A1 that title was transferred in favour of respondents on 12/6/1985. Case of appellants could only be upheld if Ext.B1 agreement for sale is proved to be genuine and executed by Narayanan. Narayanan was examined as PW5. PW5 deposed that he did not execute the document and signature seen in Ext.B1 is not his signature. Learned Munsiff and learned District Judge elaborately appreciated the evidence and found that execution of Ext.B1 agreement was not proved. Learned counsel appearing for appellants argued that evidence of DWs.3 and 4 attestors to Ext.B1 should have been accepted and evidence of PW5 should not have been believed. Learned Munsiff and learned District Judge have given cogent reasons for accepting the evidence of

PW5 and acted upon the evidence of PW5. Appreciation of evidence cannot be challenged in the second appeal. It was found that Ext.B1 was not executed by Narayanan. Appellant did not take any steps to compare the signature of the executant in Ext.B1 with the admitted signature of PW5. On the evidence courts rightly found that Ext.B1 is not a genuine agreement for sale. I do not find any substantial question of law involved in the appeal.

Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.